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In the Supreme Court of the United States

OCTOBER TERM, 1960

DANIEL G. ALEXANDER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims on the merits (Pet. App. 5a–9a) is not yet reported. The opinion of the Court of Claims denying the parties' motions for summary judgment (Pet. App. 1a–4a) is reported at 141 C. Cls. 569.

JURISDICTION

The final judgment of the Court of Claims was entered on December 1, 1960. The petition for a writ of certiorari was filed on February 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the court below erred in concluding, on the record before it, that petitioners' ranks, grades,

and ratings in the United States Maritime Service were those which would have been assigned to Coast Guard personnel in comparable positions.

STATUTE INVOLVED

Section 216(a) of the Merchant Marine Act of 1936, as amended, 53 Stat. 1182 (46 U.S.C. 1126(a)), provides:

> * * * The [Maritime] Commission is authorized to determine the number of persons to be enrolled in the [United States Maritime] Service, to fix the rates of pay of such persons, and to prescribe such courses and periods of training as, in its discretion, is necessary to maintain a trained and efficient merchant marine personnel. The ranks, grades and ratings for the personnel of said Service shall be the same as are now or shall hereafter be prescribed for the personnel of the Coast Guard. * * *

STATEMENT

Petitioners and twenty-seven other present or former administrative enrollees in the United States Maritime Service, assigned for duty to the United States Merchant Marine Academy at Kings Point, New York, brought suit in the Court of Claims to recover pay of which they were allegedly illegally deprived when their positions were reevaluated and new ranks and ratings were assigned them. They relied upon Section 216(a) of the Merchant Marine Act of 1936, as amended, *supra*, which provides that the rates, grades, and ratings of personnel of the United States Maritime Service "shall be the same as are now or shall hereafter be prescribed for the personnel of the Coast Guard."

The relevant facts are as follows:

When the United States Merchant Marine Academy was established in 1942, ranks, grades, and ratings were assigned to its personnel. In 1953, a preliminary survey by the Maritime Administration, successor to the Maritime Commission, indicated that serious discrepancies existed between the work performed and the ranks and ratings of the personnel performing the work. A survey and reevaluation of positions was made, as a result of which petitioners were reduced in rank and compensation on April 30, 1954. The reevaluation was made on the basis of standards used for classifying civilian government positions covered by the Classification Act of 1949, 63 Stat. 954, 958, 5 U.S.C. 1071, 1101(b), rather than on Coast Guard standards (Pet. App. 5a–6a).

In an opinion rendered on March 5, 1958, which denied motions by the parties for summary judgment, the Court of Claims held that Coast Guard standards should have been used and that (*Walsh* v. *United States*, 141 C. Cls. 569, 573; Pet. App. 4a):

> Unless the status assigned to the positions in the reevaluation happened to coincide with that of comparable positions in the Coast Guard, we think the reevaluation was illegal and that persons who were prejudiced by it may recover. * * *

At the ensuing trial, the government's witness, who was an officer of the Coast Guard qualified to testify as to personnel allowances in that Service,[1] evaluated

[1] Commander Victor Pfeiffer of the United States Coast Guard was Chief of the Personnel Allowances Section in the Program Analysis Division, Office of the Deputy Chief of

petitioners' own job descriptions in accordance with United States Coast Guard rules, regulations, and personnel policy and practices, as they existed in April 1954 (Pet. App. 24a–25a). He compared the positions held by petitioners at the Merchant Marine Academy to positions at the Coast Guard Academy (Pet. App. 20a–24a). A table of allowances was compiled from this evaluation, which included the billet authorized under Coast Guard standards for each of the plaintiffs and which showed that petitioners were not entitled under the applicable standards to higher ratings than those to which they had been reassigned. Accordingly, the court denied their claim for any pay differential, and dismissed their petition (Pet. App. 9a). As to others of the original plaintiffs, however, the court held that they were entitled to higher ratings and granted their prayer for relief (Pet. App. 7a–8a).

ARGUMENT

The decision of the Court of Claims turned wholly upon the particular facts of this case and presents neither a question of general importance nor any conflict in decisions. Moreover, contrary to petitioners' contention, there is ample evidence to support the findings.

1. The Court of Claims accepted petitioners' contention that the use of classified civilian personnel standards in establishing their ranks, grades, and ratings was in violation of the provisions of Section

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Staff, who was charged with the responsibility of determining manpower requirements to meet the needs of the Coast Guard (Pet. App. 23a).

216(a) of the Merchant Marine Act of 1936, as amended (see *supra*, p. 2), since it read the Act to require adoption of Coast Guard standards. It further held that recovery should be granted to those plaintiffs who were prejudiced by this violation (see *supra*, p. 3)—*i.e.*, were given a rank and pay rate less than that which they would have received had Coast Guard standards been employed.

On the basis of this determination, with which the government does not take issue, the court was called upon simply to compare, with respect to each plaintiff, his assigned status after reevaluation with his proper status based upon Coast Guard standards. If a particular plaintiff's assigned status was worse, the court allowed recovery of the resulting loss in pay differential. If his assigned status was equal or better, the court found no pay differential and dismissed the petition.[2]

2. Contrary to petitioners' assertion (Pet. 5), the court below dismissed their claims on the record before it, not on mere "speculation, hypothesis and guess". Those few portions of the findings which petitioners have carefully selected for quotation in their petition (Pet. 4) do not accurately reflect the record. With respect to the evidence bearing upon

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[2] The court did, however, find that Coast Guard standards could not be applied to nine of the petitioners because the work they performed was not performed by Coast Guard service personnel (Pet. App. 8a). This finding, like the court's findings as to the proper ranks, grades, and ratings of the other fifty-five petitioners under Coast Guard standards (see *infra*, pp. 6-7), is a determination of a factual issue based on the evidence in the record (see Pet. App. 24a).

the ultimate question of whether each petitioner's rank, grade, and rating was at the proper level in the light of Coast Guard standards, the Court of Claims said (Pet. App. 7a–8a):

> Although Commander Pfeiffer's testimony shows that there may be many occasions in the Coast Guard in which the rank and salary of the officer or man has little relation to the work which, at least for the time being, he is doing, we have no doubt that, on the whole, there is in the Coast Guard as in all other rationally operated organizations, a correlation between rank and salary, on the one hand, and duties, on the other. Commander Pfeiffer's testimony confirms this, since he was able, with regard to many of the plaintiffs, to determine, from their self-prepared job descriptions, what grade or rank a Coast Guard person having those duties would normally hold. In such cases, if the grade given on the 1954 revaluation was lower than the Coast Guard grade would have been, the plaintiff is entitled to recover the difference in pay between the two grades.

A table of allowances was included in the findings, which was compiled from Commander Pfeiffer's "evaluation of [petitioners'] job descriptions in accordance with United States Coast Guard rules, regulations, and personnel policy and practices, as they existed in April 1954" (Pet. App. 24a–25a). This table shows that petitioners' ranks, grades, and ratings were equal to or better than those to which they were entitled under Coast Guard standards. It does not appear that any evidence was introduced showing that this table failed to reflect a proper evaluation of peti-

tioners' positions on the basis of Coast Guard standards. Thus, the findings of fact, which resulted in the dismissal of petitioners' claims, were clearly supported by substantial evidence.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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